

1 CHAIRPERSON JAMES: Mr. Smith.

2 CHAIRMAN SMITH: Good morning, Chairman and members
3 of the Commission. I'd like to thank you for the opportunity to
4 speak to you today.

5 I'm Robert Smith, Tribal Chairman of the Pala Band of
6 Mission Indians.

7 I'd like to go over the Pala Compact, why it's good
8 for Pala and all Californians. The Pala Tribal State Compact
9 took 17 months to negotiate. At the beginning most everyone
10 understood and agreed that this process would lead to a model
11 compact for others to follow. It took years before that to get
12 the Governor to the negotiating table because he felt rightly or
13 wrongly that it was not fitting for him to negotiate with any
14 Tribe that was operating gaming devices on its land that were in
15 violation of California law.

16 In August, 1996, the Governor agreed to negotiate for
17 an acceptable electronic lottery device for a Tribe that did not
18 have any operation. Pala was chosen for the role for several
19 reasons. We did not have a gaming operation. We were, however,
20 interested in establishing one on our reservation and had a long-
21 standing request into the Governor's office to negotiate a Class
22 III compact. We also, by California standards, are a large Tribe
23 (867 members and a 12,000 acre reservation in San Diego County)
24 with a stable Tribal government. For these reasons the Governor
25 felt we were in a good position to negotiate a compact that would
26 serve as a model for other compacts, and the organization
27 representing California's gaming Tribes, the California-Nevada

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1 Indian Gaming Association, agreed. So formal negotiations
2 between Pala and the Governor began in October, 1996.

3 Before the negotiations concluded many Tribes that
4 had additionally endorsed and participated in our compact
5 meetings began to criticize the process. Some of the Tribes
6 pulled their lawyers out in September of 1997 because they no
7 longer could abide by the confidentiality agreement that we had
8 entered into with the Governor at the start of negotiations.
9 This confidentiality agreement was made so that leaks to the
10 media could not force one or both sides to harden their
11 positions.

12 Pala, however, felt the negotiations were progressing
13 in a positive direction and that we were obligated to continue in
14 good faith negotiations with the Governor. We did so, and in
15 March, 1998, our compact was executed and a month later approved
16 by the Secretary of Interior.

17 What's good about the compact? Pala feels our
18 compact is good for the Tribe and other Tribes who enter into
19 substantially similar ones, and the people of California. The
20 features that convinced our Tribal Council to approve the compact
21 are these:

22 Tribes have a virtual monopoly on video gaming
23 devices. The compact allows for unique Tribal video gaming
24 devices that is a lottery, not a slot machine. The lottery
25 device agreed to by the Governor and Pala has a look and feel of
26 a video slot machine to the player but only operates legally as a
27 lottery that no one else besides the Tribes and California State
28 Lottery can operate, and CSL has made it clear that it has no

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1 intention of using fast paced video lottery games similar to the
2 kinds of devices agreed to by the Governor and Pala.

3 Tribes get an increase in video machines allowed, but
4 a limit is established for the benefit of everyone. According to
5 the compact the total number of video lottery devices that will
6 be permitted to operate on any lands for the first year is
7 19,900, an increase of almost 50 percent from the total number
8 now in operation in California on Indian lands. On March 1st,
9 1999 the number can be renegotiated upward between the new
10 governor and the Tribes. Each Tribe has a base allocation right
11 of 199 devices, but by leasing rights from other Tribes, a Tribe
12 can have up to 975 machines. This is more than the 33 of the 37
13 current gaming Tribes now have, and as for those four the total
14 number over 975 that they have cumulatively is 1200.

15 All Tribes will benefit from gaming, not just a few
16 based on the accident of location. There are more than 100
17 federally recognized Tribes in California, but less than 40
18 engage in gaming, and the majority get no benefits whatsoever
19 from gaming. This is because most Tribes are in remote rural
20 locations and cannot attract persons from major population
21 centers to gamble on their Reservations. Pala and the Governor
22 are of the firm belief that all Tribes should benefit from the
23 gaming. Accordingly, we worked out a mechanism so that every
24 federally recognized Tribe is entitled to a base allocation right
25 of 199 machines that it can, if it chooses, lease to another
26 Tribe more advantageously located for \$5,000 per device per year.
27 This amounts to about \$1,000,000 in annual revenue that any non-
28 gaming Tribe who chooses to lease it's rights to other Tribes.

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1 Rights of workers and patrons protected. The compact
2 assures that non-gaming related employees (e.g. restaurant,
3 hotel, laundry, valet parking) who choose a union can
4 collectively bargain with Tribes for certain worker protections.
5 Some Tribes do not like this provision, but Pala feels that there
6 is no reason not to extend these rights to employees who by a
7 majority vote choose to have them.

8 Similarly, Pala agreed to provide workers'
9 compensation, unemployment insurance, disability compensation to
10 its workers, as well as protections from OSHA, the Fair Labor
11 Standards Act and the state's Labor Code. We also agreed to
12 utilize the Uniform Building Code, the county standard for fire
13 suppression and safety, as well as to provide adequate emergency
14 medical services and security. We think these guarantees are
15 good for the Tribe and for everyone affected.

16 Cooperative regulation with the State to assure
17 integrity of the games. We agreed, indeed, invited, the State to
18 do background checks on certain key employees and investors.
19 Again, this is in the mutual interests of the Tribe, our
20 customers, and the general public.

21 County participation agreement for off-reservation
22 environmental impacts. If a county, which is legally a
23 subdivision of the State, chooses to do so, and does not already
24 permit in a majority of its jurisdiction gambling and card rooms,
25 it may negotiate a government-to-government agreement with the
26 Tribe to mitigate significant off-reservation environmental and
27 related aspects of the Tribal gaming facility.

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1 Arbitration is the principal way disputes are
2 resolved. To avoid costly and time consuming litigation battles,
3 the Tribe and the State, including the county if it chooses to
4 negotiate in a participation agreement with the Tribe, agree to
5 resolve disputes through a mutual arbitrator.

6 Most favored nation provision. The compact contains
7 a most favored Tribe or nation provision, which means that if any
8 other later Tribe conducts a more favorable company provision
9 than what Pala or other compacting Tribes enjoy, that they
10 automatically get the benefit of the new better provision.

11 Comparing Proposition 5 to the Pala Compact. Pala
12 feels the compact is a model to build on, not a ceiling or the
13 best that the Tribes can get, but a floor for improvement. In
14 stark contrast to our compact, however, is Proposition 5 which
15 several Tribes who do not like our compact are supporting on the
16 November ballot. When we compare the compact with Proposition 5,
17 Pala comes out in favor of the compact, and here's why:

18 Proposition 5 is a "cookie-cutter" compact imposed on
19 all Tribes and the State. Proposition 5, if it passes in
20 November and survives a likely court challenge as to its
21 constitutionality, mandates the terms of Class III gaming
22 agreements between the Tribes and California with no negotiation,
23 no compromise, and no discussion. It is a take it or leave it
24 compact that ignores the government-to-government relationship
25 between states and Tribes that our compact recognizes and
26 respects.

27 Proposition 5 contains no protections for workers or
28 patrons. Unlike our compact, the initiative recognizes no rights

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1 of workers to rudimentary protections like unemployment or
2 disability insurance, workers' compensation, OSHA and Fair Labor
3 Standards Act protections, and it gives no rights to patrons that
4 would guarantee the integrity of the games they play on Tribal
5 lands and resolve disputes over prizes in a neutral forum. This
6 is bad business and unnecessarily tarnishes the reputation of
7 Tribes as fair and decent.

8 Proposition 5 contains no environmental protections
9 for off-reservation impacts, and gives no right to counties to
10 negotiate agreements with Tribes to protect non-Indians who come
11 onto the Indian lands to gamble.

12 Proposition 5 is penny wise and pound foolish for
13 Tribes. The initiative, if passed and held constitutional, would
14 essentially allow Tribes, and Tribes alone, to operate slot
15 machines on their land. While this would benefit gaming Tribes
16 in the short run, it is a long-term death knell for Tribal
17 gaming. Why? Because Proposition 5 is simply a statutory
18 measure. What the Tribes gain by its passage, any other group
19 can achieve by legislative enactment or any other statutory
20 initiative. How can Tribes justify to the people of California
21 that they alone are entitled to have slot machines on their
22 lands, and not racetracks, card rooms or other enterprises?

23 The Pala Compact is fair to our Tribe and public
24 interest. It is not a grab all for Tribes alone, but balances
25 legitimate competing interests of Tribes, law enforcement
26 workers, environmentalists and local government. It is truly a
27 model that other Tribes have successfully built on and gone

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1 beyond. We hope your Commission will examine its model for other
2 states and Tribes.

3 Thank you.

4 CHAIRPERSON JAMES: Thank you.

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